IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 906 (S/S)07

Committee of Management,
Devta Bhure Shah Trust Mata Shakhumbari Devi,
Junior High School Manglore,
District Haridwar,
Through it's Manager. ---- Petitioner.

Vs.

1. Director, Vidhyalayi Shiksha,
   Uttarakhand, Dehradun,
2. Addl. District Education Officer (Basic),
   District Haridwar,
3. Suman Baliyan, Head Mistress,
   Devta Bhure Shah Trust Mata Shakhumbari Devi,
   Junior High School Manglore,
   District Haridwar. ---- Respondents.

Sri Sharad Sharma, learned counsel for the petitioner.
Sri N.P. Sah, learned Standing Counsel for the State / respondent nos. 1 & 2,
Sri Alok Singh, Sr. Advocate, assisted by Sri D. Barthwal, learned counsel for respondent no.3,

Hon'ble M.M. Ghildiyal, J.

Heard Sri Sharad Sharma, learned counsel for the petitioner, Sri N.P. Sah, learned Standing Counsel for the State/respondent nos. 1 & 2 and Sri Alok Singh, Sr. Advocate, assisted by Sri D. Barthwal, learned counsel for respondent no.3.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 07.07.2007 passed by respondent no.2, annexed as annexure no.6 to the writ petition. The impugned order has been passed by Addl. District

Education Officer (Basic), district Haridwar by which he has revoked suspension of respondent no. 3 which was proposed by the Committee of Management of Devta Bhure Shah Trust Mata Shakhumbari Devi, Junior High School, Manglore, District Haridwar.

Learned counsel for the petitioner has assailed the impugned order on various grounds, including; that the order has not been passed by the Competent Authority; that the Competent Authority is the District Education Officer whereas the impugned order has been passed by the Addl. District Education Officer (Basic).

Counter, rejoinder affidavits have been filed in this matter. In the counter affidavit, the respondent no. 3 has stated that at the relevant time when the District Education Officer, Haridwar was transferred; the charge of District Education Officer was with Addl. District Education Officer (Basic) and, as such, he was competent to pass the order impugned.

In the rejoinder affidavit, the petitioner has clarified the position that on transfer of District Education Officer Haridwar, the charge was with Addl. District Education Officer (Madhyamik) and not with Addl. District Education Officer (Basic). Having heard learned counsel for the parties and perusing of the record; I am of the opinion that the order impugned has been passed by Addl. District Education Officer (Basic), who was not the competent authority to pass the order.

Learned counsel for the respondent no. 3 has submitted that the resolution was not itself passed by the competent Committee of Management, in these circumstances it is

immaterial whether the order has been passed by Addl. District Education Officer (Basic) or by the Addl. District Education Officer (Madhyamik). He has further stated that the resolution suspending respondent no. 3 was passed by the Committee of Management, who was actually, not empowered to pass such order. On the other hand, learned counsel for the petitioner has submitted that the Committee of Management who has passed the resolution was, in fact, in power.

Learned counsel for the petitioner has further submitted that the suspension order was passed by the Manager of Committee of Management on 07.07.2007 and the papers did not even send to the District Education Officer on that date and the Addl. District Education Officer (Basic) suo-moto has revoked the suspension order. On the other hand learned Senior counsel for respondent no. 3 has submitted that the order was not passed suo-moto, on the contrary the President, Vice President, Deputy Manager of the Committee of Management, alongwith respondent no. 3 and some other members of the Committee of Management approached the Addl. District Education Officer (Basic) to revoke the suspension order, as the same was not passed by the Committee of Management in power.

I agree with the submission of the learned counsel for the petitioner that Addl. District Education Officer (Basic) was not competent authority to pass the order but at the same time, I cannot record any findings in support of resolution passed by the alleged Committee of Management whether the resolution was passed by the competent Committee of Management or not, this aspect would be decided by the Competent Authority at

district level, whether the resolution was passed by valid committee of Management or not?

Learned counsel for the petitioner has further submitted that the papers relating to suspension of respondent no. 3 have already been sent to the District Education Officer Haridwar. In these circumstances, I deem it fit and proper to direct District Education, Officer Haridwar, or any other officer who is in-charge District Education Officer Haridwar, to enquire into the whole matter on its level.

Accordingly, the impugned order dated 07.07.2007 passed by the Addl. District Education Officer (Basic), Haridwar is hereby quashed. The District Education, Officer Haridwar, or any other officer who is in-charge District Education Officer Haridwar, is directed to enquire into the whole matter on its level and find out whether the resolution was passed by the valid Committee of Management or not. Incase, the resolution is passed by the Committee of Management, which is competent to pass such order, then he will either approve or disapprove the suspension order of respondent no. 3 on the basis of merits as also under the Provisions of Uttarakhand Education Act within a period of 10 days from the date of production of a certified copy of this order. The District Education Officer, while passing order shall afford opportunity of hearing to all concerned parties.

There involves disputed question of facts as to whether the resolution suspending the respondent no. 3 was passed by the Committee of Management which is valid or not? The disputed question of facts cannot be decided in a writ petition preferred under article 226 of the Constitution of India.

I deem it fit and proper to direct the respondents that till the decision is taken by the District Education Officer, Haridwar in this matter, the suspension order shall be kept in abeyance.

Thus, till the decision is taken, operation of order dated 07.07.2007 (annexure no.5) suspending respondent no. 3 shall be treated in abeyance.

With the above observations, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 14, 2007:
NCM: